

07 CV 3731

JUDGE MARRERO

BADIAK & WILL, LLP  
Attorneys for Plaintiff  
FORTIS CORPORATE INSURANCE  
106 Third Street  
Mineola, New York 11501-4404  
(516) 877-2225  
Our Ref.: 07-E-002-RB

UNITES STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

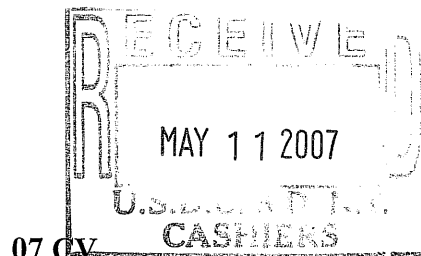
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FORTIS CORPORATE INSURANCE as subrogee  
of EMPIRE RESOURCES, INC.,

Plaintiff,

-against-

TOTAL QUALITY LOGISTICS, INC., and  
HILL'S TRUCKING, INC.,

Defendants.  
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COMPLAINT

Plaintiff, FORTIS CORPORATE INSURANCE as subrogee of EMPIRE RESOURCES, INC., by its attorneys, Badiak & Will, LLP, complains of the defendants, upon information and belief, as follows:

1. This is a claim under the Court's jurisdiction regulating Interstate Commerce and the Carmack Amendment, 49 USC §11706.

2. At and during all the times hereinafter mentioned, plaintiff was and still is a corporation organized and existing under and by virtue of the laws of a foreign nation with an office and place of business located at c/o Arthur J. Gallagher & Co., 444 Madison Avenue, New York, New York 10022.

3. At and during all the times hereinafter mentioned, defendant, TOTAL QUALITY LOGISTICS, INC., was and still is a corporation duly organized and existing

under and by virtue of the laws of one of the United States of America, with an office and place of business located at 1701 Edison Drive, Loveland, Ohio 45140.

4. At and during all the times hereinafter mentioned, defendant, HILL'S TRUCKING, INC., was and still is a corporation duly organized and existing under and by virtue of the laws of one of the United States of America with an office and place of business located at 2305 Highway 57 East, Grand Junction, Tennessee 38039.

5. At and during all the times hereinafter mentioned, defendants were common carriers of merchandise for hire in interstate commerce and bailees of cargo.

6. Plaintiff was the insurer of cargo who was obligated under its policy of insurance to pay, and did make payment to its assured, for loss and damage to the shipment and would be, or otherwise become, subrogated to the rights of its assured against third parties, including the defendants, for the loss and damage sustained and who is now entitled to maintain this action.

7. All conditions precedent required of plaintiff and its predecessors in interest have been performed.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST BOTH DEFENDANTS**

8. Plaintiff repeats and realleges all allegations in paragraph "1" thru "7" as if fully set forth herein.

9. That on or about September, 2006, EMPIRE RESOURCES, INC., contracted with defendant, TOTAL QUALITY LOGISTICS, INC., to transport a shipment of aluminum coils from Houston, Texas to Richardson, Texas.

10. TOTAL QUALITY LOGISTICS, in turn, contracted with defendant, HILL'S to transport said shipment.

11. Defendants, in violation of their duties as common carriers and bailees of cargo, failed to deliver said cargo as contracted.

12. By said premises, plaintiff sustained damage in the amount of \$75,000.00, no party of which has been paid although demanded of defendants.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT  
TOTAL QUALITY LOGISTICS, INC.**

13. Plaintiff repeats and realleges all allegations in paragraphs "1" thru "12" as if fully set forth herein.

14. On or about February 8, 2007, plaintiff's counsel, Badiak & Will, LLP, settled this matter with defendant, TOTAL QUALITY LOGISTICS, INC., in the amount of \$63,404.61 in return for a release and assignment.

15. Even though the defendant received a release and assignment, defendant, TOTAL QUALITY LOGISTICS, INC., refuses to forward settlement funds.

16. Defendant's, TOTAL QUALITY LOGISTICS, flagrant breach of its settlement agreement has caused plaintiff to incur additional legal fees and expenses and loss of use of said settlement funds.

17. By said premises, plaintiff has sustained damages in the amount of \$63,404.61, no part of which has been paid although duly demanded of defendant.

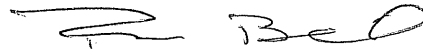
**WHEREFORE**, plaintiff, FORTIS CORPORATE INSURANCE as subrogee of EMPIRE RESOURCES, INC., demands judgment in the amount of \$75,000.00 on the first cause of action and \$66,404.61 on the second cause of action as against defendants TOTAL QUALITY LOGISTICS, INC., and HILL'S TRUCKING, INC., both jointly and severally, plus interest, costs, attorney's fees and such other and further relief as this Court may deem just and proper.

DATED: Mineola, New York  
May 10, 2007

Yours, etc.,

BADIAK & WILL, LLP  
Attorneys for Plaintiff  
106 Third Street  
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Our Ref.: 07-E-002-RB

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "R Badiak", written over a horizontal line.

ROMAN BADIAK (RB-1130)